IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

FRIDAY, THE 3RD AUGUST 2007 / 12TH SRAVANA 1929

WP(C).No. 1105 of 2005(F)

AGAINST THE ORDER DATED 04/06/2004 IN IA.NO.2653 /2003 IN OS.114/2001 of SUB COURT, TIRUR

.....

PETITIONER:

VETTIYAMVEETTIL BASHEER,
S/O. KUNJUMOIDEENKUTTY, VETTOM AMSOM, TIRUR,
MALAPPURAM,REPRESENTED BY POWER OF ATTORNEY HOLDER
SHARAFUDEEN, S/O. VEERANKUTTY, CHOONIKKAL HOUSE,
MUTHUR P.O., TIRUR.

BY ADV. SRI.P.V.JAYACHANDRAN

RESPONDENT:

VELIYAMBATTU MOIDU, S/O. SAITHALAVI,
TRIKKANDIYOOR, MUTHUR P.O., TIRUR.

BY ADV. SRI.T.KRISHNAN UNNI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 03/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC : 1105 OF 2005

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 : TRUE COPY OF THE ORDER IN IA NO.2653/2003 IN OS NO.114/2001 DT.04.06.2004.

PIUS C. KURIAKOSE, J.

W.P.(C) No. 1105 OF 2005

Dated this the 3rd day of August, 2007

JUDGMENT

An application under Order IX Rule 13 for setting aside an ex-parte decree in a suit for specific performance of a contract for sale of the property was allowed by the learned Subordinate Judge imposing a condition that a sum of Rs.25,000/- shall be paid/deposited obviously by way of cost is under challenge in this Writ Petition.

I have heard the submissions of Sri.P.V.Jayachandran, learned counsel for the petitioner and Sri.T.Krishnan Unni, learned counsel for the respondent. Having decided to allow the application on considerations of "justice and fair play", according to me, the learned Judge should not have been thus harsh in the matter of imposing cost. Accordingly, I modify the impugned order to the extent of reducing the cost from Rs.25,000/- to Rs.5,000/- and clarifying that the sum of Rs.5,000/- shall be the cost which will not be treated as cost of the suit, irrespective of the result of the suit. This amount will be paid by the petitioner to the respondent within three weeks from today, either directly or through the respondent's counsel in this court or in the court below. Once cost is paid and the impugned order becomes operative, the learned Subordinate Judge will formulate issues on the basis of the

contentions raised in the written statement stated to be filed already, give top priority to the suit, try and dispose of the same at the earliest by special listing the same in the earliest available special list for trial.

PIUS C. KURIAKOSE, JUDGE

btt